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Supreme Court, U.S.
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No. 90-

# In the Supreme Court of the United States

OCTOBER TERM, 1990

COLEGIO DE ABOGADOS DE PUERTO RICO,
PETITIONER,

*v.*

ROBERT E. SCHNEIDER; HECTOR RAMOS; ORESTE V. RAMOS; JORGE F. ROMANY; AND JORGE SOUSS,
RESPONDENTS.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the lower federal courts, when adjudicating attorneys' constitutional attack on compelled membership in the Colegio de Abogados de Puerto Rico, may disregard the inherent power of the Supreme Court of Puerto Rico to regulate the legal profession, and ignore the Puerto Rico Court findings of fact and conclusions based on findings made in the disbarment proceedings of attorneys that resulted in a final decision of the Supreme Court of Puerto Rico in *Colegio de Abogados* v. *Schneider*, from which Respondents failed to seek review in this Court as required by the *Rooker-Feldman* doctrine.

2. Whether this Court's decision in *Keller* v. *State Bar of California* allows lower federal courts to independently review the federal constitutional validity of Puerto Rico's integrated bar, in open contradiction with a final decision of the Supreme Court of Puerto Rico which decided the very same issue after extensive hearings and after making specific findings of fact as to the bar association's organization, functions and duties, the activities that were germane to the legal profession and the administration of justice, and in which the Puerto Rico Court detailed the remedies and protection to be afforded to dissenting members.

3. Whether the lower federal courts acted impermissibly by, in effect, compelling the Colegio de Abogados to disregard the mandate issued by the Puerto Rico Supreme Court after its final decision in *Colegio de Abogados* v. *Schneider*, and creating an unnecessary confrontation between the federal and commonwealth judiciaries that violates the basic principles of the abstention doctrine.

4. Whether the Colegio de Abogados de Puerto Rico, as an integrated bar, is a state actor for purposes of 42 U.S.C. § 1983, because, as held in *Keller*, the essentially advisory services rendered by the bar do not project the entity into the formulation of policies or into the execution of endeavors traditionally reserved to government agencies.

## PARTIES TO THE PROCEEDINGS

Petitioner, who was one of the appellants below, is Colegio de Abogados de Puerto Rico. Other appellants, the Secretary of Justice and the Secretary of the Treasury of the Commonwealth of Puerto Rico, are to file a separate Petition.

Respondents, who were appellees below, are Robert E. Schneider; Hector Ramos; Oreste V. Ramos; Jorge F. Romany; and Jorge Souss.

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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### Opinions Below

The final opinion of the Court of Appeals was entered on October 24, 1990 and appears reprinted in Appendix A at page A-1. The order of the Court of Appeals denying the Petition for Rehearing with the suggestion for rehearing en banc was entered on December 20, 1990 and appears reprinted in Appendix B at page A-37. The court of appeals opinion in *In re Justices* appears in Appendix C at page A-39. The court of appeals opinion in *Romany* v. *Colegio de Abogados de Puerto Rico* appears in Appendix D at page A-58. The opinions of the

district court appear reprinted in Appendixes E, F, G, and H at pages A-82, A-125, A-164, and A-180 respectively. The opinions of the Supreme Court of Puerto Rico appear reprinted in Appendixes I and J.

## Jurisdiction

The opinion of the Court of Appeals was entered on October 24, 1990. The Order of the Court of Appeals denying the petition for rehearing en banc was entered on December 20, 1990.

This Court has jurisdiction to review the judgment or decision of the Court of Appeals for the First Circuit under 28 U.S.C. § 1254 (1).

## Constitutional and Statutory Provisions Involved

The First Amendment of the Constitution of the United States provides that:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The law constituting the Colegio de Abogados de Puerto Rico, 4 L.P.R.A. §§ 774, 775, 781, 783 (1978), Appendix L at A-301.

The law requiring that Colegio de Abogados stamps be affixed to instrument drawn by notaries, 4 L.P.R.A. §§ 1006, 1038 (1978), Appendix M at A-304.

## Statement of the Case

This controversy originated on November 27, 1977, when the Colegio de Abogados de Puerto Rico (Colegio) requested that the Supreme Court of Puerto Rico discipline 99 attorneys, including the five respondents herein, to pay their dues as members of the bar as required by 4 L.P.R.A. §§ 774, 775, 780.

After the appropriate proceedings, all attorneys paid their dues except Robert E. Schneider and Hector R. Ramos, two of the respondents herein. They averred that the law compelling membership, as well as that requiring payment of the forensic and notarial stamps, were unconstitutional under both the United States and the Puerto Rico Constitutions.

The Supreme Court of Puerto Rico, in an opinion written by then Chief Justice Trias Monge, comprehensively addressed the issues raised by Schneider's and Ramos' objections. *Colegio de Abogados de Puerto Rico* v. *Schneider*, 112 PR Dec. 540 (1982).[1] Citing *Lathrop* v. *Donohue*, 367 U.S. 820 (1961), the Puerto Rico Supreme Court upheld the constitutionality of compulsory bar membership and publicly compelled financial support through payment of dues and cancellation of stamps. However, citing *Abood* v. *Detroit Bd. of Education*, 431 U.S. 209 (1977), the Court also held that attorneys had a right "to raise objection to the use of their contributions or part thereof for ideological activities they do disapprove."

The Colegio was ordered to draft a remedy to protect dissenting members' rights according to a set of guidelines established by the Puerto Rico Supreme Court that required compliance with U.S. Supreme Court precedents such as *Abood*. *Id.* The Puerto Rico Court retained jurisdiction to deal with the remedy that had to be drawn.

Soon thereafter, on June 9, 1982, Schneider and Ramos filed a civil rights action under 42 U.S.C. § 1983 in the U.S. District Court for the District of Puerto Rico against the Colegio, the Commonwealth Secretaries of Justice and the Treasury. Respondents challenged on federal constitutional grounds, compulsory bar membership and publicly compelled financial support of the Colegio.[2] Three other respondents, Jorge F.

[1] The whole official translation is found in Appendix I at pages A-221—A-240.

[2] Respondents also sued the Justices of the Commonwealth Supreme Court. The Court of Appeals dismissed the claims against them "insofar as they involve Puerto Rico's system of compulsory bar membership and compulsory payment of bar dues." *In re Justices*, 695 F.2d at 27. Regarding the stamp litigation, the court considered the Justices to be "nominal parties." *Id.*

Romany, Jorge Souss Shidrewa and Oreste V. Ramos Diaz, also filed substantially similar claims, and all four cases were consolidated.

The Colegio submitted to the Puerto Rico Supreme Court for its approval the proposed remedy the court had ordered it to devise. Before the Puerto Rico Court could express itself about the proposed remedy's validity, the District Court issued a judgment declaring the challenged bar statutes unconstitutional "as applied," and enjoining defendants from enforcing them. *Schneider* v. *Colegio de Abogados de Puerto Rico*, 565 F. Supp. 963 (D.P.R. 1983).

In *Romany* v. *Colegio de Abogados de Puerto Rico*, 742 F.2d 32 (1st Cir. 1984) the Court of Appeals vacated the judgment of the District Court and ordered the District Court to abstain while retaining jurisdiction. The Circuit Court held that "the Supreme Court of Puerto Rico must be allowed an opportunity to *complete the process initiated but not completed in its opinion of April 5, 1982*," 742 F.2d at 40-41 (emphasis added), i.e., review the Colegio's proposed remedy, and accept, reject or modify it.

The proceedings that took place before the Commonwealth Supreme Court after the Circuit Court's mandated abstention, and which resulted in the remedy at issue herein are set forth in *Colegio de Abogados* v. *Schneider*, 117 D.P.R. 540 (1986), Official Translation at Appendix J, A-243—A-264, and merit no repetition. Several of its aspects deserve emphasis. At a prehearing conference held on January 4, 1985 before the Special Master appointed by the Puerto Rico Court to receive evidence, Respondents Oreste Ramos, Jorge Romany and Jorge Souss refused to participate any further in the proceedings. The case then continued with the full participation of respondents Schneider and Hector Ramos.

Evidentiary hearings were held on January 15 and 22, February 4, 5 and 6, and March 11, 13, and 25, 1985. Colegio presented extensive testimony and documentary evidence that was never controverted by plaintiffs Schneider and Ramos.

These two respondents presented in evidence the record of the proceedings in the previous federal court case. None of the respondents made any *England* reservation of federal claims or federal forum.

On June 26, 1986 the Commonwealth Surpreme Court, per Chief Justice Pons Nunez, issued its opinion and established the Remedy which called for the protection of dissidents' rights. The Puerto Rico Court made extensive findings of fact to complement the findings made in its previous decision, as well as those in the District Court's 1983 opinion in the *Schneider* 1983 Decision. Such fact finding was necessary, the Court held,

> [B]ecause the analysis of the Federal Court only extracted, from the evidence brought before it, those examples which in its opinion evidenced ideological or politico-partisan activities. Said Court did not deem it convenient to describe the manifold character of the Bar Association, of its other activities, or the proportion of resources devoted to them. App. at A-249.

From a meticulous analysis of the evidence before it, the Supreme Court concluded "that the so-called ideological [activities] are only a minimum vis-a-vis all the work performed by the Bar Association". The record also shows that the Supreme Court appended to its 1986 opinion a catalog of all the evidence evaluated by the Court. Subsequently this evidence was brought by the Colegio from the Supreme Court to the District Court but no portion thereof was submitted by respondents as evidence nor taken into evidence by the District Court.

The Puerto Rico Court then fashioned the remedy providing dissenting bar members with an effective instrument to protect their rights. The Court devised the remedy in light of the Puerto Rico Constitution, the standards set by the U.S. Supreme Court precedents it deemed applicable,[3] and the

[3] The Court based its opinion on *Machinist* v. *Street*, 357 U.S. 740 (1961); *Lathrop* v. *Donohue*, 367 U.S. 820 (1961); *Railway Clerks* v. *Allen*, 373 U.S. 113 (1963); *Abood* v. *Detroit Bd. of Education*, 431 U.S. 209 (1977); *Ellis* v. *Railway Clerks*, 466 U.S. 1883 (1984); *Chicago Teachers Union* v. *Hudson*, 475 U.S. 292 (1986).

court's inherent judicial power to regulate the legal profession in Puerto Rico. Subsequently, the Court rejected Schneider and Ramos' motion for rehearing which raised objections to the remedy based on the constitutional arguments they have insisted on throughout this litigation. Indeed, Mr. Schneider admitted to the District Court at a later hearing held on May 19, 1989, that the Supreme Court proceedings substantially afforded the plaintiff the remedy they were seeking.

Plaintiffs then sought relief before the District Court and reactivated the federal case. At a status conference held on November 21, 1986, the District Court ordered the parties to file memoranda discussing the effect that the 1986 Puerto Rico Supreme Court decision had over the federal case. After the parties filed their submissions, the district court reopened the case and held a pretrial conference on June 17, 1987. Respondents indicated to the district court that the only issue was one of *law*, whether the remedy provided by the Supreme Court was constitutional or not. This was repeated at the last hearing and is also the position of the district court in its last opinion. Neither at the pretrial, nor at any other time, after the 1986 remedy was issued, did the plaintiffs reframe their claims as suggested by the Court of Appeals in *Romany*, 742 F.2d 32 at 44. The Colegio then moved for dismissal on the same jurisdictional grounds that were raised at the pretiral conference. The District Court erroneously denied the motion, *see*, *Schneider* v. *Colegio de Abogados de Puerto Rico*, 670 F. Supp. 1098 (D.P.R. 1987), and after a hearing that the District Court indicated might have been unnecessary, it entered judgment for the plaintiffs and issued an injunction.

The petitioner appealed to the Court of Appeals for the First Circuit arguing that the district court lacked jurisdiction; that any appeal from the Supreme Court of Puerto Rico remedy could only be taken to the Supreme Court of the United States; that the declaratory and injunctive relief was improperly granted to regulate past conduct and was based on stale

evidence; that the injunction was addressed to entities and persons who had no control over the remedy established by the Supreme Court of Puerto Rico; that the district court had improperly disregarded the findings of the Supreme Court of Puerto Rico and substituted its own interpretation about the scope of the functions and germane activities in which the Colegio could engage.

While the appeal was pending but after arguments were heard, this Court rendered its opinion in *Keller* v. *State Bar of California*, 495 U.S. __, 110 L.Ed2d 1, 110 S.Ct. 2228. The Court of Appeals rendered its decision on October 24, 1990. The court affirmed the district court's judgment in part, reversed it in part and modified it and remanded it for further proceedings. The Court of Appeals rejected all jurisdictional challenges; found that the statute and the decision of the Supreme Court of Puerto Rico define too broadly the range of activities that may be funded with compulsory dues; and granted the Colegio de Abogados and the Secretaries six months to submit a "modified version of its rule, or an alternative (one)"; finally, the injunction to be entered if the above is not done will bar the Colegio "from compelling membership until it either ceases all ideological activities not germane to its core purposes or *devises an adequate system to protect dissenters' rights*". The Court of Appeals therefore, disregarded the system devised by the Supreme Court of Puerto Rico and ignored the fact that neither the Colegio nor the Secretaries may change a remedy that was, after extensive hearings, adjudicated by the Supreme Court to satisfy the claims made by respondents.

The Colegio de Abogados then filed a petition for rehearing with a suggestion that it be reheard en banc. The petition was denied, and the order was entered on December 20, 1990.

## REASON FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT OF APPEALS BELOW IS IN CONFLICT WITH ARTICLE III OF THE CONSTITUTION AND WITH APPLICABLE DECISIONS OF THE SUPREME COURT CONCERNING JURISDICTION.

A. *Federal jurisiction is lacking since respondents failed to appeal any adverse ruling or insufficient remedy to the Supreme Court of the United States — the only court which may review decisions of said nature under the* Rooker - Feldman *doctrine; jurisdiction is also lacking, since respondents failed to properly reserve before the Supreme Court of Puerto Rico any federal claim.*

1. *The district court lacked jurisdiction to entertain this suit under the Rooker - Feldman doctrine.*

The intervention by the federal courts below constitutes a *de facto* second unwarranted attempt to review a decision by the Supreme Court of the Commonwealth of Puerto Rico.[4] In so doing, the courts have nurtured the sort of conflicts and frictions between the federal and state court systems which both Congress and this Court have constantly attempted to diminish and avoid. At the same time, the Federal incursion into an area of regulation of the legal profession — where important state interests abound, *Middlesex County Ethics Committee* v. *Garden State Bar Association*, 457 U.S. 423, 434-5 (1982), in effect sanctions Respondents' forum shopping between the two court systems. See, *Atlantic Coast Line Co.* v. *Brotherhood of Loc. Eng.*, 398 U.S. 281, 287 (1970), favorably citing *Oklahoma Packing Co.* v. *Oklahoma Gas & Electric Packing Co.*, 309 U.S. 4 (1940).

The ban on federal court review of state court judgments is a firmly established doctrine, *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 416 (1923); *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983), which has been described as "of great importance in protecting fundamental principles of

[4] The first attempt, *Schneider* v. *Colegio de Abogados de Puerto Rico*, 565 F.Supp. 963 (DPR 1983), was expressly vacated by appeals court's decision in *Romany* v. *Colegio de Abogados de Puerto Rico*, 742 F.2d 32, 45 (1st Cir. 1984).

federalism." Tribe, *American Constitutional Law*, p. 202, n.4 (2d ed. 1988); see Chang, *Rediscovering the Rooker Doctrine: Section 1983, Res Judicata and the Federal Courts*, 31 Hastings L.J. 1337 (1980). Just as review of final decrees or judgments of the highest courts of the State corresponds to the Supreme Court of the United States, 28 U.S.C. § 1257 (1988), review of the final judgments of the Supreme Court of the Commonwealth of Puerto Rico also, correspond to this Court. 28 U.S.C. § 1258; *Posadas de Puerto Rico Associates* v. *Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986).

Throughout the long history of this case it has been defendant's unflagging position that the holding in *Rooker*, and its progeny, stand as a jurisdictional barrier to the exercise of jurisdiction by the district court.

Civil rights actions brought pursuant to 42 U.S.C. § 1983 by individuals denied admission to state bars have been deemed subject to the *Rooker* restriction. A plaintiff cannot, therefore, clothe his grievance "in the garb of 1983 . . . alleging that the decision of the state court deprived [him] of constitutionally protected rights or interests." *Dasher* v. *Supreme Court of Texas*, 650 F.2d 711, *Opinion withdrawn and substituted, on other grounds*, 658 F.2d 1045, 1046 (5th Cir. 1981); *Doe* v. *Pringle*, 550 F.2d 596, 599 (10th Cir. 1976).

A further jurisdictional consideration operates in Section 1983 actions involving attorney discilpine. *Feldman* established that "United States district courts . . . have jurisdiction over general challenges to state bar rules, promulgated by state courts in non-judicial proceedings, *which do not require review of a final state court judgment in a particular case.*" (Emphasis added) 460 U.S. at 486. Accordingly, the district court lacks jurisdiction if as happened here the Commonwealth Supreme Court proceedings in *Colegio de Abogados de Puerto Rico* v. *Schneider*, 117 P.R. Dec. 540 (1986), were of a judicial nature, or if the district court decided respondents' challenge to state bar rules promulgated by the Commonwealth Supreme Court by reviewing a final decision of such Court.

2. *The Puerto Rico Supreme Court proceedings were Judicial in Nature.*

The determination of whether proceedings are judicial or not, for the purpose of establishing jurisdiction is, of course, a matter governed by federal law. *Hermandad-Union de Empleados del Fondo* v. *Monge*, 613 F.Supp. 96, 99 (D.P.R. 1985), see, *In Re Summers*, 325 U.S. 564, 566 (1945). The adversarial nature of the proceedings is one of the factors which the Court will consider in determining its judicial or non-judicial nature. See, *In Re Summers*, 325 U.S. at 568. Bar member disciplinary proceedings are considered judicial in nature. *Middlesex County Ethics Committee* v. *Garden State Bar Association*, 457 U.S. at 433-34.

The decision of the Supreme Court of Puerto Rico in *Colegio de Abogados* v. *Schneider*, 112 D.P.R. Dec. 540 (1982) was unequivocally adjudicative in its nature and as such constituted judicial proceedings for purposes of 28 U.S.C. § 1738. The Court of Appeals noted in *In Re Justices*, 695 F.2d 17 (1st Cir. 1982) that *whenever* the Supreme Court of Puerto Rico acts upon a complaint filed before it based on nonpayment of dues "the Justices act as they should in any other case based upon a Commonwealth statute: they sit as adjudicators, finding facts and determining law in a neutral and impartial judicial fashion." 695 F.2d at 21. The final decision of the Court of Appeals of October 24, 1990 is in direct conflict with its prior opinions.

As can be seen in both opinions in *Schneider* v. *Colegio de Abodagos*, 112 P.R. Dec. 540 (1982), hereinafter *Colegio I*, and 117 P.R. Dec. 540, hereinafter *Colegio II*, the proceedings before the Commonwealth Supreme Court were of a clearly adversarial nature. As has been previously stated, these commenced with the filing of an action by the Colegio before the Commonwealth Supreme Court against 99 attorneys, including the five respondents herein, requiring payment of their

annual dues. All attorneys paid their dues except Messrs. Schneider and Ramos, who challenged both compulsory bar membership and the payment of forensic and notarial stamps under both the United States and Commonwealth constitutions. The Commonwealth Supreme Court appointed a Special Master on both occasions to receive whatever evidence the parties might wish to present. The Special Master rendered his report on September 9, 1980, in which he included a stipulation of the parties regarding the matters involved, as well as the evidence presented.

Following the *Romany* decision by the Court of Appeals ordering the district court to abstain from adjudicating the issues, the Commonwealth Supreme Court conducted extensive judicial proceedings. On November 13, 1984, the Court issued an order providing a temporary remedy, ordered a hearing to give the parties an opportunity to present evidence, and appointed a former Justice of the Court to act as Special Master. On January 4, 1985 a prehearing conference was held. On January 23, 1985 the parties signed a stipulation requesting a modification of the November 13, 1984 resolution, which was granted by the Court. An evidentiary hearing lasting eight (8) days was held during January, February and March of 1985. The Colegio presented what was described as "abundant oral and documentary evidence," which was not controverted. Attorney Schneider submitted the record before the Federal District Court as evidence before the Special Master. The Colegio presented the Special Master with a Summary and Analysis of the Evidence, Findings of Fact, Conclusions of Law and a proposed remedy. Attorneys Schneider and Ramos raised objections to the Colegio's proposed findings of fact and conclusions of law and presented their own counterproposal of findings of fact and conclusions of law. After the corresponding briefs were filed, the case was taken under advisement in March, 1987. The Commonwealth Supreme Court, as can be seen from the previous summary of proceedings, was clearly

involved in the investigation, declaration and enforcement of liabilities as they stood on actual or prior facts. The courts below deny this fact but it is plain and simple that the judicial nature of the remedy is the only appropriate interpretation of the proceedings before the Commonwealth Supreme Court.

The courts below nonetheless ignored the true nature of the Commonwealth Supreme Court proceedings and took the expedient approach of splitting those proceedings into two alleged distinguishable and separate parts. Pursuant to this unrealistic scenario, one stage, considered judicial in nature, commenced prior to the 1986 remedy and to the reinstatement of attorneys Schneider and Ramos. The other stage considered to be a "rule making proceeding," apparently commenced with the reinstatement of said attorneys and ended with the 1986 remedy, *Schneider* v. *Colegio de Abogados*, 670 F.Supp. at 1102.

The District Court's erroneous conclusion that *Colegio de Abogados I* ended the adjudicative aspect of the present controversy "so that the 1986 opinion is pure rulemaking," *Colegio de Abogados II*, 670 F.Supp. at 1103, mistakenly seeks support for its "bifurcated theory" on dicta from *Zimmerman* v. *Grievance Com. of Jud. Dist.*, 726 F.2d 85, 86 (2d Cir. 1983), *cert. denied*, 467 U.S. 1227 (1984). In *Zimmerman*, the court remarked that a state court could combine in one opinion "an adjudication of a grievance complaint with a promulgation of what amounts to a new rule." 726 F.2d at 86. In *Zimmerman* the court acknowledged that "it would be inconsistent with the thrust of *Feldman* to resolve ambiguities in a state court opinion in favor of the 'promulgation' of a 'new' rule and thereby encounter a jurisdictional issue in the absence of a clear statement from the state court." 726 F.2d at 87. The Court of Appeals erroneously affirmed this view.

In 1982, the Supreme Court of Puerto Rico found that compulsory bar membership was constitutionally valid and that the Colegio enjoys ample freedom of speech. Concomitantly, the Supreme Court upheld Schneider and Ramos' right to dis-

sent from the ideological pronouncements of the Colegio and therefore to object to the use of their contributions, or part thereof, for those activities. The Court further acknowledged the need to enforce said right. The nature and scope of the constitutional infringement required the creation of a very particular remedy, a remedy tailored to the constitutional violation incurred. Cf. *Hill* v. *Gautreaux*, 425 U.S. 284, 294 (1976). The creation of such remedy protects Schneider and Ramos' constitutional rights, for it will be that remedy which "constitutes the actualization of the right." O. Fiss, *The Forms of Justice*, 93 Harv. L. Rev. 1, 52 (1979); P. Schuck, *Suing Government*, Chap. 1 (1983).

*Colegio de Abogados II* is the effectuation of the remedy in a process begun by the Puerto Rico court in its 1982 decision. The 1986 decision was rendered following the appointment of a special master and an evidentiary hearing in which Schneider and Ramos actively participated. Briefs were submitted by the parties before the Court and Schneider and Ramos even filed a Motion for Reconsideration once the decision was announced. The remedy issued *specifically* granted Schneider and Ramos the right to request a *refund* for any non-germane expenditures by the Colegio, thus providing relief for past wrongs.

All proceedings before the Commonwealth Supreme Court, which culminated in the 1986 remedy, including the court's remedy for attorneys who object to the Colegio's objectionable or ideological activities, therefore, represent one continuous process, a *judicial* one clearly.

3. *The Constitutional Challenge to the Remedy is inextricably intertwined with the Commonwealth Supreme Court decision and thus could not be reviewed by the District Court.*

The complaint filed by Schneider and Ramos in federal district court is an attempt to seek review of the judgment ren-

dered in 1982 in *Colegio de Abogados I* as well as the subsequent Remedy promulgated by the court in *Colegio de Abogados II* when the process initiated in 1977 came to fruition.

As stated by the Court in *Feldman*, "[i]f the constitutional claims presented to the United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the District Court is in essence being called upon to review the state-court decision. This the district court may not do." 460 U.S. 483, n.16.

As noted above, "a state court could combine in a single opinion an adjudication of a grievance complaint with a promulgation of what amounts to a new rule." *Zimmerman*, 726 F.2d at 86. Even if the Puerto Rico Supreme Court's remedy in *Colegio II* is construed as rulemaking, it is obvious respondents' claim cannot be evaluated without reviewing said decision.

The Puerto Rico Supreme Court's 1986 remedy and its opinion are so intertwined that the courts below were forced to review important aspects of *Colegio II* in order to formulate its own decision.

Such manner of proceeding constitutes an impermissible review of the Puerto Rico court's judicial proceedings. As indicated by Justice Marshall, concurring in *Pennzoil* v. *Texaco*, 481 U.S. 1, at 25:

> [I]t is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

4. *Respondents' suit in the federal court was barred by the prior judgment of the Puerto Rico Supreme Court.*

In *Feldman*, the Supreme Court recognized the possibility that a constitutional challenge to state bar rules which had been preceded by state court bar admission proceedings could be foreclosed by the doctrine of res judicata, 460 U.S. at 487-8, or "claim preclusion as the term is frequently being referred to." *Migra* v. *Warren City School District Board of Education*, 465 U.S. 75 (1984).

It is clear that 28 U.S.C. § 1738 "requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." *Kremer* v. *Chemical Construction Corp.*, 456 U.S. 461, 466 (1982). The fact that the rights sought to be vindicated are of a federal constitutional nature, and that the action is in the nature of a § 1983 suit, do not diminish their effect. The bar applies both to issues adjudicated in prior proceedings, as well as to issues that could have been but were not raised in an earlier suit. *Allen* v. *McCurry*, 449 U.S. 90 (1980); *Migra* v. *Warren City School District Board of Education*, 465 U.S. 75 (1984).

This court has set forth clear and explicit rules concerning claim preclusion. In *England* v. *Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964) *("England")* the Court created the right to reserve the federal forum as an accommodation between the duty of federal courts to accept jurisdiction of federal cases, and the policy of abstention. See *Migra* v. *Warren City School District Board of Education*, 465 U.S. 75, 83-85 (1984), *Allen* v. *McCurry*, 499 U.S. 90, 101 n.17 (1980). The record before the Puerto Rico court clearly shows a total absence of any attempt at making such reservation after the Court of Appeals' mandated abstention.

In *England*, the Court established what it considered a

bright and clear line: A litigant shunted by abstention to state court must inform that court what his federal claims are "for the purpose of complying with *Windsor*, and that he intends, should the state courts hold against him on the question of state law, to return to the District Court for disposition of his federal contentions." *Id. at* 421. Moreover, the Court "explicitly" held that if a party freely and without reservation submits his federal claims for decision by the state courts, "he has elected to forego his right to return to the District Court." *Id.* at 419. *See also*, *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 427-28 (1983).

In the case at bar, none of the respondents complied with either *England* or *Windsor*. Indeed, respondents Schneider and Ramos submitted to the Supreme Court of Puerto Rico as evidence in their favor the record of the case before the federal court, and such record was received in evidence and considered by the Puerto Rico court upon making its decision. *Colegio de Abogados II* (Official Translation at 6-7, A-248—A-249. ).

As to the other respondents, their failure to comply with *England* and *Windsor* is even more egregious. After the Court of Appeals mandated abstention, they simply withdrew from the judicial proceedings before the Commonwealth Supreme Court, and did not seek any other remedy in any other Commonwealth court. See *Colegio de Abogados II* Official Translation at 5, A-247. In sum, these other respondents simply waived their rights, and implicitly agreed to have the court determine the proper remedy as to them on the basis of respondents Schneider's and Ramos' presentation of the facts and the legal issues.

Having freely and without reservation, submitted their federal claims for decision by the Commonwealth Supreme Court, *Colegio de Abogados II* precludes respondents relitigating the issues of fact and the federal claims decided by the court, as well as those they failed to submit.

B. *The courts below erred because, as jurisdiction was lacking under 42 U.S.C. § 1983, if the Puerto Rico Justices acted as either judges or legislators, under* Supreme Court of Virginia *v.* Consumer Union, *the courts were barred from awarding damages, declaratory or injunctive relief as to petitioner, who at all times acted according to the orders of the Puerto Rico Supreme Court.*

1. *The Colegio is not a state actor for purposes of 42 U.S.C. Section 1983.*

The District Court in *Schneider*, 565 F.Supp. 963, 973-974 (1983) concluded that the Colegio's actions were state action because of the "Colegio's symbiotic relationship to the various branches of the Commonwealth . . ." The Supreme Court in *Keller* v. *State Bar of California*, 495 U.S. ____, 110 L.Ed.2d 1, 110 S.Ct. 2228, rejecting the determination by the Supreme Court of California that the State Bar of California was a government agency, expressed a view fatally different from that expressed in *Schneider*, supra.

The Court in *Keller* stated, 110 L.Ed.2d at 12-13,

> The State Bar of California is a good deal different from most other entities that would be regarded in common parlance as "governmental agencies." Its principal funding comes not from appropriations made to it by the legislature, but from dues levied on its members by the Board of Governors. Only lawyers admitted to practice in the State of California are members of the State Bar, and all 122,000 lawyers admitted to practice in the States must be members. Respondent undoubtedly performs important and valuable services for the State by way of governance of the profession, but those services are essentially advisory in nature. The State Bar does not admit

> anyone to the practice of law, it does not finally disbar or suspend anyone, nor does it ultimately establish ethical codes of conduct. All of those functions are reserved by California law to the State Supreme Court.

*Keller* goes on to find that there is a substantial analogy between the relationship of the State Bar and its members and the relationship of the union and its members. The basic essence of both is the difference from the typical government official or agency. They are private entities. The analysis of the Supreme Court negates any "symbiotic" approach.

If the Colegio engaged in ideological and prohibited actions as concluded by the district court, then the nature of the partial catalog of activities — collected by the Court in its 1983 opinion and reproduced in its 1988 opinion, *Schneider*, 682 F.Supp. at 678-681 — were not activities in which "government", specifically the Supreme Court or the Secretaries, insinuated themselves into a position of interdependence from which they "must be recognized as joint participants in the challenged activity". See *Morast* v. *Lance*, 807 F.2d 926, 93 (11th Cir. 1987). No finding by the District Court nor by the Court of Appeals leads to this conclusion.

The Court of Appeals has recognized, where the impetus of the alleged discrimination is private, the State must have "significantly involve[d] itself. . . ." *Davis* v. *Richmond*, 512 F.2d 201 (J. Campbell, 1975). For the same reasons, the public function test cannot apply since no delegation has been made to the Colegio of any power traditionally reserved to the State. As indicated in *Keller*, 110 L.Ed.2d at 12-13, all the functions are reserved by the law to the Supreme Court.

If the alleged violations to dissidents are due to the activities the district court and the panel have found objectionable then the third test — the nexus test — also fails the respondents. *Morast*, supra, 807 F.2d at 931. Again, the impetus of the activities is private and they can't be treated as those of the State.

As indicated by the Court in *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345, 357 (1974) the nexus test is fulfilled only when the state participated in the challenged activity by "putting its weight" behind the challenged activity itself. See *Fitzgerald* v. *Mountain Laurel Racing, Inc.*, 607 F.2d 589, 597 (3rd Cir., 1979).

For the above stated arguments, jurisdiction under Section 1983 is lacking as to the Colegio.

2. *The Justices and The Supreme Court of Puerto Rico are immune.*

Necessarily, we must then turn to examine whether the Justices, and the Colegio as subrogate of the Justices, may be sued under § 1983.

The Justices in their individual capacities are immune, the court as an entity is not vulnerable to § 1983 suits because it is protected by state immunity under the Eleventh Amendment. *Harris* v. *Missouri Court of Appeals*, 787 F.2d 427, 429 (8th Cir., 1986). We submit that if respondents cannot bring the Justices or the Court as an entity under § 1983, their action must also fail as to the Colegio and the Secretaries. *Clark* v. *State of Washington*, 366 F.2d 678, *cert. den.*, 375 U.S. 986 (1966).

The District Court and the Court of Appeals have now rejected the argument that the 1986 Remedy was a judicial determination. Both courts have indicated that it was part of the rulemaking process, with the Court of Appeals concluding that the Supreme Court "invoked its inherent powers over the bar to go beyond their individual complaints to accomplish needed bar reform." (A-13).

If, as found by the Court of Appeals, the Supreme Court invoked its inherent powers over the bar to achieve overall supervision of the practice of law, then *Supreme Court of Virginia* v. *Consumers Union*, 446 U.S. 719 at 734 (1980) teaches that the court then exercises the State's entire legisla-

tive power with respect to regulating the bar; the Justices are the legislators for all purposes of regulating the bar. In said situation the immunity extends to damages as well as to "§ 1983 actions seeking declaratory and injunctive relief." *Id.* at 732-733. Neither the Supreme Court of Puerto Rico as an entity, nor the Justices may be subject to a § 1983 action for damages or injunctive relief. This legal impossibility impedes the issuance of an injunction against the Colegio. The underlying premise is that as a "legislator" the Supreme Court is not a "person" for purposes of § 1983 jurisdiction. And, quite simply jurisdiction would be lacking in this case. See *Harris*, supra, 787 F.2d at 429. See also the discussion in *Star Distributors, Ltd.* v. *Marino*, 613 F.2d 4 (2nd Cir., 1980) cited at footnote 10 by the Court in *Consumers Union*, *supra*, 446 U.S. at 733. A panel composed of Judges Campbell, Coffin and Bownes in *Colon Berrios* v. *Hernandez Agosto*, 716 F.2d 85 (1st Cir. 1983) held that a plaintiff seeking to prove the existence of "proper case" to enjoin a legislative action "must overcome the threshold obstacle of legislative immunity" and noted that the Supreme Court clearly extends that immunity to "the impositions of equitable relief." 716 F.2d at 88.

The continuous relevance and application of these principles is a natural corollary of the conclusion by the Court of Appeals (note 10, A-14) that the question before the Court is "whether the *Rule modifies the compulsory Colegio system specified by statute* so that the system meets constitutional requirements". If that is so, there can be no doubt that the legislative function can only possibly be exercised by the Supreme Court. The Colegio is powerless to engage in any modification of a system so specified by the Supreme Court of Puerto Rico. As the Court indicated in *Consumer Union*, 446 U.S. at 734, if the sole basis for the actions were the issuance of, *or failure to amend*, the challenged rule, legislative immunity would foreclose suit. This norm applies to the case at bar as the Supreme Court and the Justices have not been im-

pleaded as enforcers or as legislators. *Pulliam* v. *Allen*, 466 U.S. 522 (1984) is of no impact to the present analysis as prospective remedy may not be granted. *See also* dissenting opinion at 544.

The Colegio acts as an arm of the Supreme Court, as an integral part of the judicial system, *Clark* v. *State of Washington*, 366 F.2d at 681. That is the reasoning to allow others absolute immunity from liability, see *Babcock* v. *Tyler*, 884 F.2d 497, 501-502; and the post-adjudicative activities are also covered, *Id.* at 503. The actions of those acting under court order of compulsion have been recognized as covered by the immunity of who gives the order, the judges. *Slotnick* v. *Garfinkle*, 632 F.2d 163, 166 (1st Cir., 1980) (per curiam) (Judges Coffin, Campbell and Bownes); *Green* v. *Maraio*, 722 F.2d 1013, 1019 (2nd Cir. 1983).

In *Forrester* v. *White*, 48 U.S. 219, 230 (1988) the Court reviewed judicial immunity and concluded that absolute immunity must be recognized when the danger of judges being deflected from the performance of their duties is very great. That is the precise situation in which the Justices of the Supreme Court of Puerto Rico will be placed if the opinions of the federal courts below are allowed to stand.

## II. The decision of the Court of Appeals below is in conflict with the applicable decisions of the Supreme Court in matters concerning comity and abstention.

### A. *The courts below erred when they substituted their own interpretation of the public interest embodied in the statutory and judicial establishment of an integrated bar in Puerto Rico; and in further demeaning the expressions of the Supreme Court of Puerto Rico as to the historical, sociological and juridical justification for its opinions concerning the type and nature of activities found germane to the duties and obligations of the Colegio de Abogados.*

The courts below in discarding the expressions of the Supreme Court of Puerto Rico as to the scope of the activities it finds germane to the Colegio functions disregarded basic principles of federalism. As Judge Campbell and Judge Breyer stated in their *en banc* opinion in *Piper* v. *Supreme Court of New Hampshire*, 725 F.2d 110 (1983) the Supreme Court of a state or its legislature may reasonably regard as harmful matter what may be of no concern to other states.

Chief Justice Rehnquist in his dissenting opinion in *S.Ct. of New Hampshire* v. *Piper*, 470 U.S. 274 at 292 characterizes this aspect of the legal practice as "distinctly and intentionally nonnational" with the "State having a substantial interest in creating its own set of laws responsive to its own local interests . . .". It was precisely to this end that the Supreme Court of Puerto Rico explained at length the need for the court to envision as it does the function of the Colegio. Those expressions by the Supreme Court of Puerto Rico should not be taken lightly if a true spirit of federalism is to survive.

B. *The Court of Appeals improperly requires the Colegio de Abogados to engage in a negotiation with the Supreme Court of Puerto Rico and to submit in six months to the District Court a new rule or some alternative, this procedure of monitoring state courts has been rejected by this Court as antipathetic to established principles of comity in the regulation of the legal profession.*

In *O'Shea* v. *Littleton*, 414 U.S. 488, 500-501 (1974) the Court revisited the object of comity that warrants withholding federal relief. Citing *Stefanelly* v. *Minard*, 342 U.S. 117, 120 (1951), the court reminded that "the object is to sustain the special delicacy of the adjustment to be preserved between federal equitable power and state administration of its own law". The Court of Appeals below has expressly allowed the

District Court to engage in the type of monitoring of state court functions that the Supreme Court has recognized to be "antipathetic to established principles of comity". *O'Shea*, *id.*, at 501.

The Supreme Court then, at 501-502, cautions against the complicated situation that arises from federally mandated continuing obligations of compliance. The scenario is similar to what may occur if multiple cases of non-compliance take place. The rationale in *O'Shea* and of those cases cited therein is applicable to the district court continuing *monitoring* of the Supreme Court of Puerto Rico remedy as disbarment proceedings may result if objecting attorneys refuse to obey the challenge remedy. Those disbarment proceedings are considered to be "quasi-criminal in nature". See *Keating* v. *Martin*, 638 F.2d 1121, 1123 (8th Cir., 1980), citing *In Re Ruffalo*, 390 U.S. 44 (1968).

The Court of Appeals below recognizes that the remedy that petitioners challenge is a creature of the Supreme Court of Puerto Rico and that "the Colegio is correct that the Justices are now appropriate parties in the dues claim because of their promulgation of the 1986 Rule". Actually the position of petitioner Colegio de Abogados was that the District Court (as well as the Court of Appeals) were ordering the Colegio de Abogados to change or modify a procedure that was *ordered* by the Supreme Court of Puerto Rico and that by said orders were creating a serious conflict between the obligations petitioner owes the Supreme Court of Puerto Rico and the declaratory and injunctive mandates of the federal courts.

The end result is a federal compulsion upon petitioners to modify or alter a procedure established through a judicial decision of the Supreme Court of Puerto Rico, that clearly amounts to an effort by the courts below to force the Puerto Rico court to move in the direction they find preferable. The Supreme Court of Puerto Rico expressly reserved jurisdiction to review and modify the remedy as needed by objectors who

should be going to the Supreme Court of Puerto Rico for redress. The federal effort is clearly a prohibited monitoring of that local judicial effort.

## III. The decision of the Court of Appeals below is in conflict with the applicable decisions of the Supreme Court concerning the issuance of declaratory and injunctive relief.

### A. *The existence of adequate legal remedies forbids the issuance of an injunction against the application of the remedy ordered by the Supreme Court of Puerto Rico to protect the rights of divident attorneys. Noncompliance with the requirement of joining indispensable parties to the injunction — such as the Justices of the Puerto Rico Supreme Court — deprives the federal forum of jurisdiction.*

Both courts below have designed an injunctive mandate addressed to the petitioner Colegio de Abogados and to the Secretaries. The injunctive relief granted to respondents was improperly allowed.

If the Supreme Court of Puerto Rico 1986 remedy was as argued by petitioner a judicial remedy and not an administrative rule as decided by the courts below then there is no doubt in anyone's mind that the court below lacked jurisdiction and any judgment, injunctive or otherwise, was improvidently issued.

But assuming *arguendo*, that the 1986 remedy was an administrative rule the courts below had no legal authority to issue an injunction against petitioner or against the secretaries.

One main prerequisite to obtaining injunctive relief is a finding that plaintiff is being threatened by some injury for which he has no adequate remedy at law. Wright and Miller, *Federal Practice and Procedure: Civil* § 2942 (1973 ed. pp. 368-369). See *Porto Rico Tel Co.* v. *Porto Rico Commun. Authority*, 189 F.2d 39, 41-42 (1st Cir. 1951) *cited by Trieb-*

*wasser & Katz* v. *American Tel. & Tel. Co.*, 535 F.2d 1356, 1359 (2d Cir., 1976).

The Supreme Court in *O'Shea* v. *Littleton*, supra, 414 U.S. at 502, clearly rules that a basic requisite of the issuance of equitable relief requires that a plaintiff, such as respondents, must establish the inadequacy of remedies at law. Both courts below failed to recognize this basic principle and in the absence of any allegation or proof by respondents as to inadequacy of remedies improperly issued injunctive orders against petitioners.

The adequacy of the remedies available to the respondents was admitted by Respondent Schneider to the District Court:

> We—our position is that the—regardless of the outcome of the appeal, that we have obtained a substantial improvement in the— in our— based on our position and our case by the fact— by the very fact that the Supreme Court did decide that the remedy that originally had been set up was inadequate and came up with a different remedy providing different terms even if those are not acceptable, that we have achieved substantially what we were after, regardless of what the outcome of the appeal may be. So that.....[A-K]

The respondents have ample and adequate remedies at law. They could return to the Supreme Court and request modification of the 1986 remedy, they could request any revision of the 1986 remedy they might feel necessary after *Keller* v. *State Bar of California* by filing motions on *Bar Association of Puerto Rico* v. *Robert E. Schneider, et al.*, No. 0-77-431 in which the Supreme Court has retained jurisdiction to motion the application and effectiveness of the 1986 remedy; respondents may file individual *ex parte* actions before the Supreme Court of Puerto Rico to request any relief they may feel necessary in order to protect any right they understand to be violated by their compelled membership in the Colegio de

Abogados or by the compliance by the Colegio of the mandates in the 1986 remedy.

The respondents or any other attorney may file in the Commonwealth courts actions for declaratory judgment concerning any portion of the enabling statute 4 L.P.R.A. 771, *et seq.*, and from there request review or appeal to the Supreme Court of Puerto Rico. In any event respondent could after the 1986 remedy seek review from this Court.

*Keller* shows that said recourse is not a farfetched alternative, especially since *Keller* does not turn on a specific remedy ordered by the Supreme Court a state for a bar association. 110 S.Ct. at 2237-2238. See also *Gibson* v. *The Florida Bar*, 906 F.2d 624, 631 end of note 12 (11th Cir. 1990). In *Lathrop* v. *Donohue*, 367 U.S. 820 at 824, Justice Brennan indicated concerning the integrated rule of the Wisconsin Supreme Court:

> We think that the order is a "statute" for the purposes of § 1257(2). Under that section, the legislative character of challenged state action, rather than the nature of the agency of the State performing the act, is decisive of the question of jurisdiction. It is not necessary that the state legislature itself should have taken the action drawn in question.

The finding in *Lathrop* is consonant with the long standing doctrine of avoiding any kind of monitoring of state court functions by federal courts, which the Supreme Court in *O'Shea* v. *Littleton*, 414 U.S. 488, 501 (1974), characterized as "antipathetic to established principles of comity."

B. *The courts below further erred when they based their declaratory and injunctive relief on stale evidence of events long passed.*

The District Court bases its 1988 opinion on the findings of fact presented in its 1983 opinion, *Schneider*, 682 F.Supp. at

678-679. See also 1983 opinion in *Schneider*, 565 F.Supp. at 966-971.

Prior to the hearing before the district court that resulted in the 1983 opinion, later vacated, the Colegio had presented all relevant information as to the totality of its activities and were the documents from which the district court selected the ones it found objectionable. All official publications were delivered to the Court. (Docket #114).

Records of activities either sponsored "by Colegio or held at the Colegio" were filed together with the data as to whether payment had been or had not been received; this information was provided for the previous 5 years. (Docket #128). The Colegio in addition filed substantial and numerous evidence at the 1983 hearing.

Furthermore on March 2, 1987, prior to the District Court's last hearing, that court entered an order (Docket #218) indicating that the Colegio "shall produce at the hearing all books, records, and documents necessary to *bring up to date* the information previously required by the Court." (Our emphasis).

At the pre-trial the respondents indicated that they "may announce new documentary evidence on the date of the hearing this decision will be made once the documents ordered produced by Judge TR [Torruella] are reviewed." (Docket #223).

The Colegio fully complied with the aforementioned Court Order. At the last hearing, July 8, 1987, the Colegio brought all the documents, book and records required by the March 2, 1987 order. But the Colegio went further. It produced the Supreme Court of Puerto Rico records that contained all the evidence presented both by the Colegio and by the plaintiffs. This evidence was voluminous and up to date as of July 1, 1987. Plaintiffs did not care to look at the documents and the District Court indicated:

> In view of the stipulation that has been entered into by the parties I don't know that it's necessary that I admit

> into evidence any of those documents that you brought today. After I issued the order I read the file and I thought that maybe I shouldn't have issued the order.

The court went further and indicated as follows:

> The only reason I issued my order was to give you the opportunity to bring up to date the findings of the prior opinion. Now, there is no reason to clog up the records with a whole bunch of papers in view of that stipulation. I am telling you that I am not going to then require the submission of these documents because it's unnecessary in view of the stipulation.

The Supreme Court of Puerto Rico record brought by the Colegio to the district court contained the documents listed by that court in its Appendix to the 1986 opinion, which appendix was moved into evidence by the Colegio at the July 8, 1987 hearing. So the nature of the information to which the Court of Appeals refers in footnote 8 was before the District Court and before the Court of Appeals. But the record was returned by the District Court to the Supreme Court. Any possibility of petitioners updating to 1987 the 1983 findings of facts made by the district court was then forgone by them and by the court.

The stipulation the district court so much refers to is the one quoted by the Court of Appeals in footnote 9, about which the panel indicates, *in fine*, "we note, however, that the Colegio stipulation acknowledges only that certain types of activities have continued and not that those activities constituted a substantial portion of all Colegio pursuits." It is important to note that the portion in brackets that appear in the quotation from the district court opinion was an editorial addition made by the district judge and not part of the stipulation that simply stated: *The plaintiffs and the Colegio stipulate that activities similar in nature to those undertaken by Colegio prior to 1983 have continued.* It is impossible to believe that such general statement, devoid of any factual specificity could relieve the

plaintiffs — now respondents — from their duty to present evidence in support of their allegations. As a matter of fact petitioner's position was then that the only pending issue was one of *law:* the adequacy of the 1986 remedy.

The gist of the matter is that the decision to issue the injunction was made on stale evidence, not on recent events. Courts have consistently held that this may not be done.

The granting of declaratory judgment and injunction for prior conduct as expressly done by the courts below was expressly rejected by the Supreme Court in *Green* v. *Monsour*, 474 U.S. 64, 64 (1985), where Chief Justice Rehnquist found mistaken the contention that "declaratory judgments expressly adjudicating the question of past violations are routinely available [in federal court]." See also *Los Angeles* v. *Lyons*, 461 U.S. 95, 102 (1983). The injunctions granted by the Court below were illegally issued and must be reversed.

## CONCLUSION

The issues presented in this case are of great importance to the judicial administration of compulsory bar membership across the nation, and therefore merit review by this Court. The litigation of compulsory bar membership under the United States Constitution must be developed into a cooperative effort, couched in basic principles of comity, between the states and the federal courts to allow state courts to devise and supervise the implementation of reforms that transcend minimum constitutional standards.

In this area of regulating the practice of law the crucial and most important task faced by the state courts today is, therefore, safeguarding the constitutionally protected rights of attorneys without confronting federal court monitoring so antipathetic to established principles of comity. The number of states and federal courts involved and the impact on the whole spectrum of public policy issues likewise require that

this Court clarify the standards that govern the judicial discretion that must be recognized to the supreme courts of the States to regulate and supervise the implementation of systems adopted by them to protect dissenters' rights.

The final First Circuit's Opinion (Appendix A) is in conflict with the *Rooker-Feldman* doctrine, supra. The situation requires the intervention of this Court to clarify the issues resulting from the adoption of a dissident protection system by the state courts *vis a vis* the standards to be applied when such system is devised by the bar association itself. By resolving and clarifying these issues the Supreme Court will deflect any conflict between the federal and state courts, as bar association and individual attorneys will not be faced with the grave decision of which court to obey. For these reasons, it is respectfully requested that a writ of certiorari be issued.

Respectfully Submitted,

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